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Robert Blauz
CIV. SERV.



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-114806

DATE: February 18, 1977

MATTER OF: Farm Credit Administration - Compensation of
Deputy Governors

DIGEST: Compensation of Deputy Governors, Farm Credit Administration, is authorized to be fixed at not to exceed the maximum scheduled rate of General Schedule. Such compensation, although not limited by compensation of Governor and not subject to classification provisions, may not exceed rate for level V of Executive Schedule, since effect of 5 U.S.C. 5308 is to limit maximum scheduled rate of General Schedule to level V rate. Higher amounts shown on General Schedule are merely projections of what rates would be without this limitation.

By letter dated October 29, 1976, Daniel L. Monson, the General Counsel of the Farm Credit Administration (FCA), requests our opinion as to whether the compensation payable to the five Deputy Governors of FCA is limited by the compensation of the Governor. It is the view of FCA that it is not and that the compensation of the Deputy Governors may be set at any rate which does not exceed \$54,410, the rate published for grade GS-18 of the General Schedule by Executive Order 11941, October 1, 1976, without regard to 5 U.S.C. 5308 (1970) which limits pay to the rate of basic pay for level V of the Executive Schedule, currently \$39,600.

The administration and operation of FCA is presently governed primarily by the Farm Credit Act of 1971, Public Law 92-181, approved December 10, 1971, 85 Stat. 583 (12 U.S.C. 2001 *et seq.* (Supp. V, 1975)). This legislation provides in pertinent part as follows:

"Sec. 5.7. THE FARM CREDIT ADMINISTRATION.—
The Farm Credit Administration shall be an independent agency in the executive branch of the Government. * * *" (12 U.S.C. 2241)

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"Sec. 5.11. COMPENSATION; SALARY AND EXPENSE ALLOWANCE. — The compensation of the Governor of the Farm Credit Administration shall be at the rate fixed in the Executive Pay Schedule. * * *" (12 U.S.C. 2245)

"Sec. 5.27. AMENDMENTS TO OTHER LAWS. — (a) The Executive Schedule of basic pay (80 Stat. 458, 5 U.S.C. 5311-5317), as amended, is further amended by striking from positions at level IV the Governor of the Farm Credit Administration (5 U.S.C. 5315 (51)) and inserting in positions at level III the additional position (58) Governor of the Farm Credit Administration. (5 U.S.C. 5314)."

"Sec. 5.13. FARM CREDIT ORGANIZATION—* * * The Governor shall appoint such other personnel as may be necessary to carry out the functions of the Farm Credit Administration; Provided, That the salary of positions of Deputy Governors shall not exceed the maximum scheduled rate of the general schedule of the Classification Act of 1949, as amended. * * *" (12 U.S.C. 2247) (Emphasis added.)

"Sec. 5.16. ALLOCATION OF EXPENSES FOR ADMINISTRATIVE SERVICES BY THE FARM CREDIT ADMINISTRATION; DISPOSITION OF MONEY.—(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this Act, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

"(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to said Administration for expenditure during each fiscal year for salaries and expenses of said Administration. * * *" (12 U.S.C. 2250)

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Although subsection 5.16(b) states that the funds involved shall be available for expenditure "without regard to other law", the Congress does limit the amount of the assessments which can be obligated for administrative expenses. See the Agriculture and Related Agencies Appropriation Acts, 1976 and 1977, Public Law 94-122, approved October 21, 1975, 89 Stat. 641, 666, and Public Law 94-351, approved July 12, 1976, 90 Stat. 851, 868.

It is FCA's position that the assessments collected from the farm credit agencies and used to pay the compensation of the Governor and the Deputy Governors, pursuant to section 5.16. supra, although subject to the limitation cited above, should be construed to be nonappropriated funds. However, under the view we take of this case it is not necessary to decide that question at this time and we shall not do so.

FCA further contends that neither the Farm Credit Act of 1971, supra, nor its legislative history reflects any intent to prohibit the compensation of the Deputy Governors being fixed at a rate higher than that of the Governor. While we think the statute as enacted clearly contemplated that the Deputy Governors would be paid at a lower rate than that of the Governor, we find nothing in the law to make this mandatory.

Based on the premise that the Deputy Governors are not limited by the pay of the Governor, FCA further contends that the maximum scheduled rate of the General Schedule is \$54,410, the current published rate for grade GS-18, and that the Deputy Governors' compensation may be fixed at any rate which does not exceed that amount because they are exempt from the provisions of 5 U.S.C. 5308 (1970) which limits pay to the rate for level V of the Executive Schedule, \$39,600.

In support of its position FCA argues: (1) the Deputy Governors are excluded from the coverage of chapter 51 of title 5, United States Code, relating to position classification; (2) they are excluded from the coverage of subchapter III of chapter 53, relating to General Schedule pay rates, since that subchapter applies only to employees and positions covered by the classification provisions of chapter 51; (3) they are excluded from the coverage of subchapter I of chapter 53, relating to the pay comparability system, since that subchapter applies only to General Schedule rates under

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subchapter III (and those of two other statutory systems not here involved); and (4) the Deputy Governors, being excluded from the coverage of subchapter I of chapter 53, are exempt from the pay limitation contained therein (5 U.S.C. 5308).

We are unable to agree that the Deputy Governors may be paid at a rate in excess of the rate now paid a GS-18 employee. Section 5308 of title 5, United States Code, provides:

"Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule." (Emphasis added)

Unlike the "Udall amendment" to the Legislative Branch Appropriation Act, 1977, title II, Public Law 94-440, approved October 1, 1976, 90 Stat. 1446, which does not prohibit the establishment of higher rates but merely prohibits the use of appropriated funds to pay a specified class at those higher rates, section 5308, in our view, imposes a limitation or ceiling on the rates themselves. Clearly it is "by reason of any provision of this subchapter" that the amounts in the General Schedule in excess of Executive level V are derived, and by the express language of the section they may not be paid to anyone whose rate of pay is derived from the General Schedule. The amounts in excess of Executive Level V are denoted by an asterisk in Executive Order 11941, October 1, 1976, and footnoted by an express reference to 5 U.S.C. 5308 limiting basic pay to \$39,600, the current rate for level V of the Executive Schedule. Such amounts are, in effect, nothing more than projections of what the pay rates would be were it not for the limitation. Therefore, the "maximum scheduled rate" of the General Schedule, that for grade GS-18, is limited under existing law to the rate for level V of the Executive Schedule, now \$39,600.

Further, section 5308 was added to title 5 by section 3 (a) of Public Law 91-656, approved January 8, 1971, 84 Stat. 1951, and the Congress could have readily exempted the Deputy Governors from its provisions by express language in the Farm Credit Act of 1971, supra, which was enacted nearly a year later on December 10, 1971, had that been its intent.

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Accordingly, since 5 U.S.C. 5308 limits the "maximum scheduled rate" of the General Schedule to the rate for level V of the Executive Schedule and section 5.13 of the Farm Credit Act of 1971 supra, provides that the salary rate of the Deputy Governors of FCA shall not exceed such rate, the Deputy Governors may not be paid at a rate in excess of \$39,600, notwithstanding the fact that subchapter I of chapter 53, title 5, United States Code, may not otherwise be applicable to them.

A handwritten signature in black ink, appearing to read "R. F. K...", is positioned above the typed name.
Acting Comptroller General
of the United States